



State of California California Privacy Protection Agency

To: California Privacy Protection Agency Board
(Meeting of July 14, 2023)

From: Nelson Richards
Assistant Chief Counsel

Philip Laird
General Counsel
California Privacy Protection Agency

Date: July 5, 2023

Re: Delegation of Authority to Conduct Probable Cause Hearings

This memorandum provides staff's recommendation to the Board to delegate to the Executive Director the authority (1) to conduct probable cause proceedings, and (2) to further delegate that authority to the General Counsel. Attachment A to this memorandum is a draft delegation reflecting staff's recommendation for the Board to consider during the July 14, 2023.

Background

The California Consumer Privacy Act (CCPA) establishes the California Privacy Protection Agency (the Agency) and vests it with full administrative power, authority, and jurisdiction to enforce the Act. Civ. Code § 1798.199.10. The Agency is governed by a five-member board, including the Chairperson. *Id.* The law reserves to the Board certain duties and obligations: appointing an Executive Director, resolving enforcement actions, and exercising rulemaking authority. *See id.* §§ 1798.199.30, 1798.199.35. All authority not expressly reserved to the Board may be delegated to the Chairperson or Executive Director. *Id.* § 1798.199.35.

Before the Agency enforces the CCPA through an administrative enforcement action, it must first find probable cause to believe the law has been violated. *Id.* § 1798.199.55. To make a probable cause finding, the Agency must conduct a proceeding where the alleged violator may appear in person and be represented by counsel. *Id.* § 1798.199.50. The process for conducting a probable cause proceeding is set forth in the Agency's regulations. Cal. Code Regs. tit. 11, § 7302.

Recommendation

Staff recommends that the Board delegate the authority to oversee and conduct the probable cause proceeding to the Executive Director and to allow the Executive Director to further delegate that authority to the General Counsel or to an attorney in the Agency's Legal Division. Authorizing the further delegation will ensure that staff can conduct fair and impartial proceedings by maintaining the separation between staff assisting with decision-making and enforcement staff. Such a delegation also aligns the Agency's practices with those of the Fair Political Practices Commission, which is the only other state agency of which staff is aware that is required to conduct probable cause proceedings before pursuing an administrative enforcement action.

ATTACHMENT A

CALIFORNIA PRIVACY PROTECTION AGENCY

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**Delegation to the Executive Director to Hear Probable Cause Proceedings**

Pursuant to Civil Code section 1798.199.35, the California Privacy Protection Agency ("Agency") Board delegates to the Agency's Executive Director the authority to hear and decide, or further delegate, probable cause proceedings pursuant to Civil Code section 1798.199.55 and Title 11 California Code of Regulations, Div. 6, Chapter 1. section 7302, consistent with the requirements of the Administrative Procedures Act. In order to ensure that probable cause proceedings are fair and impartial, the Executive Director may further delegate the authority to hear and decide probable cause proceedings to the General Counsel or to an attorney from the Agency's Legal Division.